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V. S.

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/646,565	05/08/96	ZIMMERMAN	T 6783

LM02/0226

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EXAMINER

SAX, S

ART UNIT PAPER NUMBER

2773

DATE MAILED:

02/26/99

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UNITED STATES DEPARTMENT OF COMMERCE
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 11

Application Number: 08/646565

Filing Date: 5/8/96

Appellant(s): Zimmerman et al

Peter Priest
For Appellant

MAILED
FEB 20 1999
Group 2700

EXAMINER'S ANSWER

1. This is in response to appellant's brief on appeal filed 1/7/99.
2. A statement identifying the real party in interest is contained in the brief.

Art Unit: 2773

3. A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

4. The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows: This appeal involves claims 1-19.

However, claims 1-15 and 18 are rejected under 35 U.S.C. 102 (e) and claims 16-17 and 19 are rejected under 35 U.S.C. 103 (a).

5. The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

6. The summary of invention contained in the brief is correct.

7. The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: Claims 1-15 and 18 are rejected under 35 U.S.C. 102 (e) and claims 16-17 and 19 are rejected under 35 U.S.C. 103 (a).

8. Appellant's brief includes a statement that claims 1-19 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Art Unit: 2773

9. The copy of the appealed claims contained in the Appendix to the brief is correct.
10. The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

5,619,416

Kosarew

4/8/97

Claims 1-15 and 18 are rejected under 35 U.S.C. 102(e). This rejection is set forth in prior Office action, Paper No. 4.

Claims 16-17 and 19 are rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office action, Paper No. 4.

(11) *Response to Argument*

The Kosarew reference updates EPL overlays even while they are in operation. See again the discussion in column 1 lines 60-68 and column 2 lines 1-11. Overlays are printed to update changes. See also column 2 lines 59-68 and also column 8 lines 25-49. Even while in operation, new overlays are provided from the batch process and then applied. It may be true that there is a batch process, but this is in operation while the EPLS are in effect in the store. Then the changes which are updated and printed out, are then applied to the items in the store. Thus this is in effect during operation of an EPL system in a store. Therefore this feature, in addition to the others, is anticipated.

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The tagging system with the unique record numbers and customer data files does provide a way in which to mark and read changes. This is used for updating records and creating new overlays accordingly. The portions in column 6 do in fact reflect the use of the tagging system as presented in columns 2-3. Also, note that a defective EPL being corrected is an example of updating and changing the record.

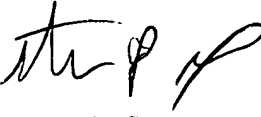
The Federal Circuit Law cases are well considered. Please note that Kosarew does not teach away from the claimed invention. The elements considered obvious in claims 16-17 and 19 of marking the records with flags or 'dirty bits' and then distinguishing them are common techniques for reading, updating, and correlating information in data files. This is exactly what Kosarew does for EPL data files. Thus the motivation is clear: to provide an efficient way to pick out changes in records for reading, upgrading, and correlating of data, in

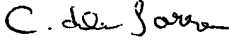
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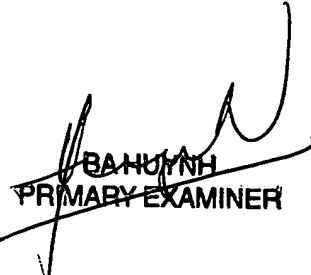
a flagging system. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

**STEVEN SAX
PRIMARY EXAMINER**


Steven P. Sax
February 24, 1999


**CRESCELLE N. DELA TORRE
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